

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.210 OF 2021

DISTRICT:- AURANGABAD

Mr. Lala S/o. Manohar Jadhavar,
Age : 60 years, Occ. Civil Engineering Assistant
(Retired), R/o: H.No. 66, Lane No. 09,
Nyayanagar, Durgamata Colony,
Garkheda Parisar, Aurangabad-431009
Mob. 9890848170
Email.Lalajadhavar61@gamil.com

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through, Additional Chief Secretary,
Water Resources Department
Erstwhile Irrigation Department,
Mantralaya, Mumbai-400032.
2. The Executive Director,
Godavari Marathwada Irrigation
Development Corporation,
"Sinchan Bhavan", Jalna Road,
Aurangabad-431005.
3. The Superintendent Engineer,
Godavari Marathwada Irrigation
Development Corporation,
"Sinchan Bhavan", Jalna Road,
Aurangabad-431005.
4. The Executive Engineer,
Godavari Marathwada Irrigation
Development Corporation,
"Sinchan Bhavan", Jalna Road,
Aurangabad-431005.

5. The Superintendent,
Godavari Marathwada Irrigation
Development Corporation,
"Sinchan Bhavan", Jalna Road,
Aurangabad-431005.
6. The Accounts Officer,
Pay Verification Unit,
Directorate of Accounts and Treasury,
Aurangabad.

... RESPONDENTS

APPEARANCE : Shri Shashikant T. Chalikwar, learned
counsel for the applicant.

: Smt. Sanjivani Deshmukh-Ghate, learned
Presenting Officer for respondent Nos. 1 & 6.

: Shri A.D. Gadekar, learned counsel for the
respondent Nos. 2 to 5.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI BIJAY KUMAR, MEMBER (A)**

DATE : 27.04.2022.

ORDER

[Per : Shri Bijay Kumar, Member (A)]

This Original Application has been filed on 20.04.2021 by
One Shri Lala S/o 1. Manohar Jadhavar, a retired Civil

Engineering Assistant invoking provisions of section 19 of the Administrative Tribunals Act, 1985, challenging the order issued by the Superintendent, Godavari Marathwada Irrigation Development Corporation bearing outward No. गोमपाविम/ आ-1/2696, dated-30.03.2021.

2. **Facts of the Matter-** Background facts of the matter, as submitted by the applicant may be summed up as follows:

a) The applicant was brought on Converted Regular Temporary Establishment (in short, "CRTE") w.e.f. on post of 'Mistry' and granted benefits of 4th pay commission pay scale and subsequently of 5th pay commission pay-scales at relevant point of time.

b) The applicant was granted benefit of 1st Time-Bound Promotion scheme on completion of 12 years of service as 'Mistry' on CRTE i.e. w.e.f. 01.10.1997 and granted *pay-scale of next rank in chain of promotions i.e. of the post of CEA*. However, till this point of time, he did not have eligibility to be absorbed in the cadre of CEA. It is only in the month of July 1999 that he passed two years' course as Surveyor from ITI Aurangabad and thus acquired requisite qualification for absorption in the cadre of CEA. Meaning thereby, that the applicant was granted benefits

of time-bound promotion on post of 'Mistry' on CRT Establishment treating CEA as next rank of promotion for 'Mistry' when he was not eligible for absorption in the newly created cadre of Civil Engineering Assistant (in short, "CEA").

c) The applicant was absorbed in the cadre of CEA, w.e.f. 17.03.2005 by an order passed on 31.01.2005 after attaining eligibility as per Recruitment Rules, 2002 for the post of CEA.

d) The applicant was granted benefits of 2nd Time-Bound Promotion, known as Assured Career Promotion Scheme on completion of 12 years of service from the date of grant of benefits of 1st Time Bound Promotion Scheme, w.e.f. 01.10.2009 vide order of the Superintending Engineer, Godavari Marathwada Irrigation Development Corporation dated 17.07.2017 treating him to be in the cadre of CEA with effect from 1997 itself and applicant's pay was fixed in the pay scale of 9300-34000+Grade Pay 4300.

e) Pay verification unit took objection to granting benefits of 2nd Time-Bound Promotion/ Assured Career Promotion Scheme w.e.f 01.10.2009 raising the issue that period of 12 years' service has to be computed from the date the applicant was absorbed in the cadre of CEA i.e. 17.03.2005.

f) Accordingly, the pay of the applicant was revised and pay of rank of Junior Engineer was computed from year 2017, difference amount has been ordered to be recovered.

g) The applicant had not passed departmental examination required for promotion to the post of Junior Engineer and therefore, had availed benefits of exemption from passing the same on attaining age of 45 years as per provisions of Government in Water Resources Department Resolution No. परीक्षा-२०१०/प्र.क्र. / / (प्रतिश), त्र , - , dated 16.09.2016

h) The applicant has retired by superannuation on 31.01.2019.

i) The applicant has prayed for relief in terms of para 21 of the Original Application which is reproduced verbatim as follows for ready reference. No Interim relief, as prayed for in terms of para 22 of the Original Application, had been granted.

3. **RELIEF SOUGHT FOR**

“A. This original application be allowed;

B. Record and proceedings may kindly be called for;

C. By appropriate order, the revised pay fixation order dated 03.02.2020 (Exhibit “N”) issued by respondent No. 4 of withdrawing benefits of Second Time-Bound Promotion of Applicant be quashed and set aside.

D. By appropriate order, the order dated 30.03.2021 (Exhibit "P") issued by respondent no. 5 of recovery of alleged excess payment be quashed and set aside;

E. By appropriate order, the objection noted dated 04.11.2019 and 07.11.2019 (Exhibit "K") issued by respondent no. 6 be quashed and set aside;

F. By appropriate Order or directions, respondents be directed to release salary and consequential benefits based on Pay fixation order dated 02.05.2019 of applicant in seventh pay scale considering benefits of Second Time-Bound Promotion issued by Respondent no. 4 (Exhibit "J") and submit the revised pension proposal for pension and consequential benefits to the Accountant General based on the last pay drawn as per this pay fixation order dated 02.05.2019.

G. Any other relief for which the applicant is entitled for may kindly be granted in the interest of justice."

4. **Pleadings and Arguments:** Respondent No. 1 and 6 have been represented by learned Presenting Officer and Respondent No. 2 to 5 have been represented by leaned advocate Shri A. D. Gadekar. Affidavit in reply on behalf of Respondent No. 6 had been filed by learned Presenting Officer who further clarified that separate affidavit on behalf of Respondent No. 1 was not required. Leaned advocate for Respondent No. 2 to 5 did not file any separate affidavit in reply. After the filing of pleadings was complete, the matter was fixed for final hearing on 21.02.2022 which actually took

place on 04.04.2022. Thereafter, the matter has been reserved for orders.

5. **Analysis of Facts and Conclusion:** Upon considering facts on records and oral submissions made by the contesting parties, we are of the considered opinion that three issues have emerged, which are for determination by us by analysis of relevant facts and rules. Inferences drawn in respect of each of the issues identified follows after detailed analysis in following paras.

a) **Issue No. 1:-** *Recruitment Rules for the post of Civil Engineering Assistants had been notified vide Irrigation Department's GR No. 1098/(985/98) आ (तांत्रिक), मंत्रालय, मुंबई 400032, dated 26.02.2002, which prescribed two modes of recruitment to the post of CEA i.e. Absorption and Nomination in ratio of 50:50 till all willing and eligible candidates for absorption have been absorbed. Thereafter, recruitment to CEA cadre will be 100% by nomination. In this background, important issue for determination is whether appointment of the applicant in the cadre of CEA by absorption amounts to promotion from posts in 14 identified cadres on CRTE establishment?*

6. **Analysis of Rules Provisions for Issue No. 1:-**

i) The cadre of CEA was created vide Maharashtra Govt. in Irrigation Department Resolution No. ११०८२/[४८०]- [त्रि], त्र , . , dated 31.01.1989 which clearly mentions that CEA is a new cadre and staff from 14 identified technical cadres will be eligible for **ABSORPTION** in to this newly created cadre, based on educational & technical qualifications and vacancies available in CEA cadre. The 14 identified cadres have been declared to be dying cadres. The Recruitment Rules for the post of Civil Engineering Assistants had been notified vide Irrigation Department's GR No. 1098/(985/98) [त्रि], त्र , . , dated 26.02.2002 which prescribe two modes of recruitment to the post of CEA i.e. ABSORPTION and NOMINATION, initially in ratio of 50:50 till all employees willing and eligible for absorption have been absorbed. Thereafter, 100% vacancies in CEA cadre will be filled by nomination. It has come to our notice that the term ABSORPTION has not been analyzed in details so as to determine whether the ABSORPTION and PROMOTION are one and the same. In past, the sense in which the two phrases have been interpreted has not been uniform and backed by any analysis. Therefore, we look in to this aspect in following paras.

ii) There are instances of absorption of employees from a dying cadre in to another cadre as per willingness and eligibility to expedite the closure of dying cadre. Like, on introduction of coin & note counting machine, the employees in the cadre of coin-note examiner were absorbed into other cadres in banking industry. Similarly, employees working in departments / public sector undertakings or any other type of office establishments, which are to be closed, are absorbed in another cadre in other establishments which is going to exist. In other words, absorption is a distinct method of appointment which does not fall under category of promotion. In the present case of employees from 14 identified cadres who do not want to get absorbed or who fail to qualify to get absorbed in the newly created cadre of CEA continue in their original respective cadres. Such employees are eligible to get benefits of time-bound promotion in their isolated posts in their original cadre as per procedure prescribed in the relevant GR. Had the phrase '**absorption**' been used as synonym of the phrase '**promotion**', in that case an employee who declines to get absorbed in the cadre of CEA or who fails to be eligible for absorption in the cadre of CEA would not have been eligible for getting benefits of time-bound promotion scheme on his /her original post. In the light of this analysis, let us examine the case of the original applicant. The applicant was given benefits of time-

bound promotion with effect from 01.10.1997, i.e. even before he became eligible for absorption in CEA cadre in year 2005 by passing prescribed examination which he could do only in the month of July 1999. This establishes that CEA is not in channel of promotion from the posts in 14 identified cadres. In other words, absorption of the applicant in the cadre of `CEA in the year 2005 was not by way of promotion.

7. **Findings on Issue No. 1:** - *appointment of the applicant in the cadre of CEA by absorption does not amount to promotion from post of 'Mistry' in CRTE establishment.*

8. **Findings on Issue No. 2** *Considering provisions of Assured Career Promotion Scheme, with reference to which date the benefits of Time-Bound Promotion Scheme/ Modified Assured Career Progression Scheme is admissible to the applicant while he was in the cadre of CEA?*

9. **Analysis of Issue No. 2:-**

(i) The applicant was actually absorbed in cadre of CEA w.e.f 17.03.2005 by way of absorption. Therefore, the absorption of applicant in cadre of CEA may only be treated as a fresh appointment by absorption in the cadre of CEA (in contrast with the promotion). For the purpose of determining the point of time the applicant became eligible for benefits of time-bound promotion in the cadre

of CEA, reference is drawn to provisions of Modified Assured Career Progression Scheme (in short MACP) issued by the Finance Department's Government Resolution No. . /प्र.क. / त्र , . , dated 01.04.2010 and we examine the relevant Rules which are quoted as follows:

“२- (ब) योजनेचा पहिला लाभ : (१) उपरोक्त संदर्भाकितं (२) येथील शासन निर्णयातील अटी व शर्तीच्या अधिन पदोन्नतीच्या संधी उपलब्ध असलेल्या कर्मचा-यांस या योजनेखाली १२ वर्षांच्या नियमित सेवेनंतर पदोन्नतीच्या पदाची वेतन संरचना मंजूर करण्यात येईल.”

(ii) From above discussions, it is inferred that the Pay Verification Unit had rightly pointed out that after absorption in cadre of CEA, the applicant was required to complete 12 years of regular services in the cadre of CEA for being eligible for getting benefits of time-bound promotion in the form of non-functional pay scale of Junior Engineer. The applicant had availed exemption from passing prescribed qualifying departmental professional examination for being eligible for promotion to the post of Junior Engineer (Civil) on attaining the age of 45 years on 04.01.2006. vide order issued by the Executive Engineer, Godavari Marathwada Irrigation Development Board, bearing office order No. 1010531, dated 18.11.2016. Since, he was in Pay-Band 1, he was eligible for benefit of MACPS which was available to employees having Pay Band up to PB-3.

10. **Findings on Issue No. 2:** - *The original applicant became eligible for time Bound promotion by getting non-functional pay scale of Junior Engineer on completion of 12 years' regular service in the cadre of CEA.*

11. **Findings on Issue No. 3:-** *In case, any recovery is to be made based on determination of Issue No. 1, whether the same can be affected after the applicant has retired on superannuation?*

12. **Analysis of Issue No. 3:-**

(i) It is undisputed that the applicant's service as 'Mistry' was brought on CRTE w.e.f. 01.10.1985. As per extant rules, 'Mistry' in CRTE is an isolated post, not having channel of promotion, therefore, he was to be granted benefit of 1st Time-Bound Promotion scheme to non-functional pay scale on next rank in promotion of CRTE employees. However, the pay scale given was equal to pay scale admissible at entry level in the cadre of CEA on completion of 12 years of service on establishment of CRTE, counted from 01.10.1997, though till that point of time the applicant did not possess requisite qualifications for absorption in the cadre of CEA which he acquired in the month of July 1999 by passing two years' ITI course of Surveyor from ITI Aurangabad. The pay fixation was also done taking into account the pay scale of CEA in

view of directions issued by Respondent No. 1 vide letter No. पदोन्नती १०९७/[३५९] आ[सा], मंत्रालय, मुंबई, दिनांक-18.06.1998, which, prima facie, appears to be wrong, potentially resulting into excess payment to the applicant. As this issue has not been raised by the respondents, we refrain from analyzing this issue and do not consider it necessary to give any findings on this aspect.

(ii) Upon granting of benefits of time-bound promotion on the post of Mistry in CRTE, pay of the applicant was fixed from 5th pay commission pay-scale of (Grade S-5) to Rs. 3050-4590 to Rs. 4000-6000 (Grade S-7), which was subsequently revised as per recommendations of 6th pay commission with reference to date 01.01.2006, to Pay Band PB-1 i.e. Rs. 5200-20200, Grade Pay 2400 and accordingly, his pay as on 01.01.2006 was fixed at Rs. 9270 plus Grade Pay- 2400.

(iii) In the present matter, benefits of MACP scheme was granted to the applicant w.e.f. 01.10.2009 vide order of the Superintending Engineer, Godavari Marathwada Irrigation Development Corporation dated 17.07.2017 and applicant's pay was fixed in the pay scale of 9300-34000 plus Grade-Pay 4300. On the other hand, the respondents have submitted that post of CEA is not in the channel of promotion for employees on CRT

establishment; to the contrary, the former is a new cadre in promotional channel of Junior Engineer (Civil).

(iv) The applicants have cited the Judgment of Hon'ble High Court of Judicature at Bombay, Bench at Nagpur, in **W.P. No. 3815/12, 3815/12 & 3807/12 (judgment delivered on 29.08.2013, Subhash s/o Ambadas Cheke Vs. Maharashtra Jeevan Pradhikaran and Ors.** However, the benefit accruing from this judgment has already been granted to the applicant by granting him benefit of time-bound promotion/ non-functional pay scale of CEA while he was not absorbed in the said cadre.

(v) It is observed that CEA is a new cadre which is not in ordinary channel of promotion of employees on CRT establishment. Therefore, the claim of the applicant for grant of benefits of MACP Scheme w.e.f completion of 12 years from the benefits of time-bound promotion on the post of 'Mistry' on CRTE i.e. on 01.10.1997 is not valid or acceptable. Otherwise too, the applicant was given benefit of time-bound promotion while he completed 12 years of regular service on the post of Mistry on CRT Establishment (though, by grant of non-functional pay scale of CEA) at a point of time when he was not eligible for absorption in the cadre of CEA, impliedly accepting that the post of Mistry on CRT establishment was isolated post. Had the post of CEA been in promotion channel of CRT establishment, then the applicant would

not have got the benefit to time-bound promotion without being eligible for promotion to the cadre of CEA.

(vi) The respondents have cited judgments of Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in W.P. No. 4919/2018 dated 23.07.2019, State of Maharashtra and Ors Vs. Suresh Chandra s/o Dharam Chand Jain and Ors to counter the assertion of the applicant that the ratio in the judgment in Hon'ble Apex Court in State of Punjab and Ors Vs. Rafiq Masih, reported in (2015) 4 SCC 334 does not apply in such cases. He has also raised objection on maintainability of the application citing judgment of Hon'ble Apex Court in *Suo Motu W.P. (civil) No. 3 of 2000*, dated 08.03.2021.

13. **Findings on Issue No. 3:-** *The impugned pay fixation order dated 03.02.2020 withdrawing benefits of Second Time-Bound Promotion of applicant issued by respondent No. 4 and order of recovery of excess payment made to the applicant as passed by the respondent No. 5 dated 30.03.2021 are as per rules and are held to be valid.*

14. **CONCLUSION-** *Based on above findings on the three issues as elaborated above, in our considered opinion the original application is misconceived and devoid of merit. Therefore, following order is being passed.*

ORDER

A) The Original Application No. 210 of 2021 is dismissed for being misconceived and devoid of merit.

B) No order as to Costs.

MEMBER (A)**VICE CHAIRMAN****PLACE : AURANGABAD****DATE : 27.04.2022**

O.A.NO. 210-2021(DB)-HDD